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No. 90-600

Supreme Court U.S.

FILED

DEC 13 1990

JOSEPH P. SPENCER, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1990

J.D. FARMER, JR.,

Petitioner,

v.

STEPHEN E. HIGGINS,
DIRECTOR, BUREAU OF ALCOHOL, TOBACCO
& FIREARMS,

Respondent.

BRIEF AMICUS CURIAE
OF ARIZONA IN SUPPORT OF THE PETITION FOR
WRIT OF CERTIORARI TO THE ELEVENTH
CIRCUIT COURT OF APPEALS

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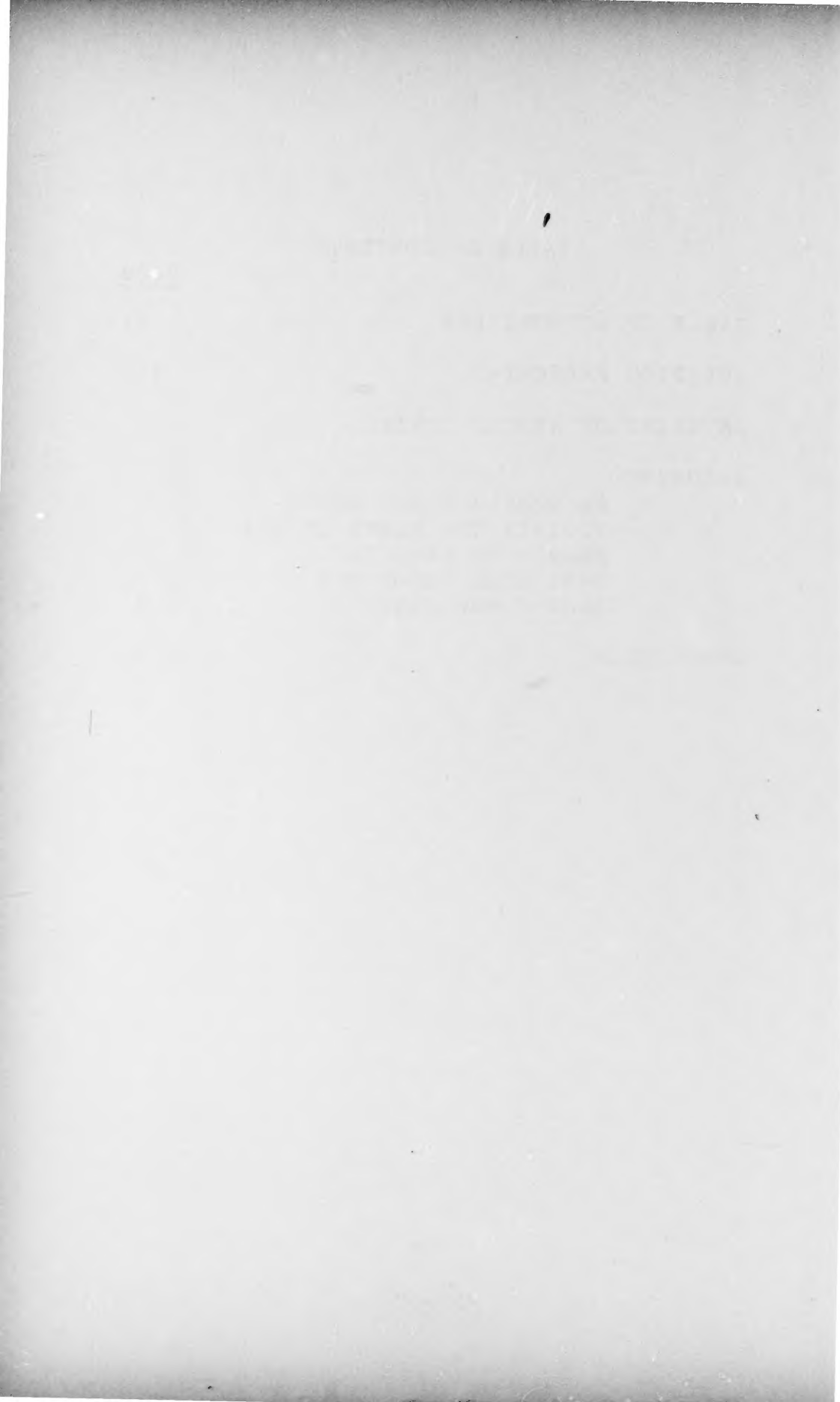


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United States v. Miller,
307 U.S. 174 (1939) 3, 4

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1901

United States Commission

and General Land Office

Case

United States v. William
101 U.S. 171 (1879)

QUESTION PRESENTED

Is the absolute ban on the possession by all citizens of machine guns not lawfully possessed prior to May 19, 1986, a violation of the right of the people to keep and bear arms under the Second Amendment to the United States Constitution?

QUESTIONS PRESENTED

Is the speaker an
member of all citizens of America
and not including persons who may
be, 1900, a member of the same
and people of town and well
the same American in the state
state territory

INTEREST OF AMICUS CURIAE

Amicus Curiae, the states of Arizona has a strong interest in the protection of its citizens' right to keep and bear arms under the Second Amendment to the United States Constitution. The absolute ban of machine guns not lawfully possessed prior to May 19, 1986 by the Firearms Owners' Protection Act as interpreted by the Court of Appeals directly impinges on this fundamental right. As parens patriae, the State of Arizona submits this brief to assist this Court in the resolution of this petition for certiorari and urge that the petition be granted.

ARGUMENT

An Absolute Ban Would
Violate The Right Of The
People To Keep And Bear Arms
Under The Second Amendment

The Second Amendment to the U.S. Constitution provides: "A Well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed."

In United States v. Miller, 307 U.S. 174 (1939), this Court remanded to the trial court the question of whether a short-barrel shotgun was an instrument covered by the Second Amendment. This Court said:

Certainly it is not within jurisdictional notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense.

Id. at 178.

APPENDIX

AN APPENDIX TO THE
VOLUME OF THE
REPORT OF THE
COMMISSIONER OF THE
GENERAL LAND OFFICE

The following is a list of the
properties of the
General Land Office, being
the results of a list of the
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A machine gun, however, is clearly a weapon used by the military and is therefore a weapon which contributes to the common defense.

United States v. Miller also makes clear that the Second Amendment's right to bear and keep arms applies to civilians, i.e. citizens.

[T]he common view was that adequate defense of country and laws could be secured through the Militia -- civilians primarily, soldiers on occasion.

307 U.S. at 179.

This Court went on and later stated:

And further, that ordinarily when called for service these men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time.

Id.

In this case, the absolute prohibition by Congress of a weapon

a machine was, however, in almost
a machine used by the subject and in
addition a machine which contributed to
the current debate.

Portrait of a man also stated
that the second photograph was
of a man and was taken in
the city of New York.

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the same person who
was in the second
photograph.

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was the same person who
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photograph.

which is undisputedly used as ordinary military equipment would deprive the citizens of their right to keep and bear such a weapon. A weapon which the Constitution contemplated would be kept by the citizens and, if called upon to defend the country, to be used for their common defense. Therefore, this absolute ban is in violation of the text and spirit of the Second Amendment.

which is undoubtedly used in various
different ways and for different
purposes of their kind in the East and West
and a variety of weapons which the
contending parties employed would be
of the weapons and, if called upon to
leave the country, as we used to find
them before the war. This
country has in its possession of the
and still in the hands of the

CONCLUSION

Amicus Curiae, the State of Arizona, prays that the writ of certiorari be granted and that this Court should reaffirm the inviolable right granted to the citizens under the Second Amendment to the Constitution.

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